No Preemption

Local tobacco-control laws are essential public health protections and an appropriate exercise of local governmental authority. Opposition? - the tobacco industry.

Background:

Defeating local tobacco-control laws is a core strategy of the tobacco industry. Two central tactics are lawsuits (or the threat of lawsuits) against local tobacco-control ordinances and preemption - the passage of state laws that eliminate the authority of local governments to enact tobacco-control ordinances. In New Jersey, we have seen both tactics.

In 1996, New Jersey municipalities began passing bans and restrictions on tobacco vending machines. Ten municipalities were sued by tobacco vendors. The industry lawsuits specifically argued that state law preempted local legislation. Even after the New Jersey Supreme Court, in 1994, upheld past Brunswik's ordinance, tobacco vendors continued to sue other towns. Ultimately, the communities prevailed in their right to enact local legislation controlling tobacco vending machines, and the industry temporarily stopped their intimidation tactics.

Later in the 1990s, New Jersey municipalities began passing smokefree air laws for workplaces and public places, including restaurants. In June 2000, the Princeton Regional Health Commission, serving Princeton Borough and Princeton Township, enacted the most comprehensive ordinance in the state, eliminating smoking in all workplaces and public places, including restaurants and bars.

The National Smokers Alliance (NSA), a Virginia-based entity, sued the municipalities, claiming preemption. (Philp Morris, Brown and Williamson, and Lorillard tobacco companies gave the NSA $42 million from 1993 to 1996 and the tobacco companies were the biggest funders of the NSA, according to the California Attorney General's office. The 2000 Surgeon General's Report [page 254] reports that the NSA collected only $74,000 in dues in 1996 (enough for 7,400 members) while its total income was more than $5 million and it "boasts that it is a nonprofit, grass-roots membership organization with more than 3 million members.") Two Princeton restaurants and one tavern joined the lawsuit. On August 29, 2000, the New Jersey Superior Court of Mercer County ruled that the weak state smokefree air legislation, passed in the 1980s, preempted the Princeton ordinance.

New Jersey should repeal the preemption of local smokefree air laws and specifically authorize municipalities and local boards or commissions of health to act in this important area of public health and safety. Here's why:

New Jersey has a strong history of local control. This New Jersey Constitution, article IV, section VII, paragraph 11, states: "The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or of fundamental implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or law." Municipalities have

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wide latitude. Towns are free to require bike helmets for children even if not all towns do; there are "dry" towns and towns with Sunday closings. Preemption is antithetical to our valued standard.

The basic principle of state protections is to set a minimum, not a maximum. With preemption, the New Jersey legislature, which has failed to protect citizens from secondhand tobacco smoke, an identified carcinogen that kills more than 50,000 Americans every year, is forbidding New Jersey municipalities from redressing state inaction.

Americans believe in preserving local freedom on tobacco-related issues. A poll conducted in 1996 found 81% opposed preemption. (The Coalition on Smoking Off Health [comprising the American Cancer, Heart, and Lung associations] and Americans for Nonsmokers' Rights commissioned the study.)

There is no need for uniform standards on tobacco control. Throughout New Jersey and the nation, different communities have selected appropriate controls for their situations. The public and the business community function smoothly; scientific studies prove that smokefree restaurant ordinances work well, even when some communities in an area have controls and others do not.

Local laws can be tailored to local needs, be more creative, and be more comprehensive.

There is great public education about tobacco during the passage of local legislation. Because changing community norms comes slowly, this community involvement is valuable.

The process of local passage leads to local "buy-in" and good compliance. Local laws can have local enforcement mechanisms, which are more accessible than state enforcement (for state laws). If there are fines for violations, the money can stay in the community.

Local tobacco control ordinances will amplify the effectiveness of the multi-million dollar, tobacco-control program that the New Jersey Department of Health and Senior Services is launching with the tobacco Master Settlement Agreement funding. Indeed, that tobacco-control program has local activities, including the education of decision makers such as local legislators, as a major component. Thus local ordinances will be synergistic, helping to save more lives and ensure better returns from the state-funded program.

The most successful state smokefree air laws are in states where there were already many local laws and where a large percentage of the population was already protected by local legislation.

Preemption protects the wealth of the tobacco industry, not the health of New Jersey citizens. Walker Meryman, of the Tobacco Institute, and Victor Crawford, a former tobacco industry lobbyist, have described how preemption protects the industry. (For more information contact Americans for Nonsmokers' Rights, 510 841-3032, www.nosmoke.org.) As reported in the 2000 Surgeon General's Report: "The most important force for smoking is the totality of industry activity, including advertising, promotion, organizational activity, support for ancillary issues, and political action, (emphasis added) which maintained marketability and profitability of the product. Efforts to reduce tobacco use face a more than $5 billion annual budget that the tobacco industry dedicates to advertising and promotion aimed at sustaining or increasing tobacco use." (from the Foreward, pages 1 and 2) The "pervasive, counterenforcing influence of tobacco promotion by the tobacco industry (is) a promotion that takes place day after day overwhelming evidence of adverse health effects from tobacco use." (Major Conclusions, p. 1) (both from Reducing Tobacco Use: A Report of the Surgeon General -- Executive Summary)